

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

OLIVIER GOUreau and OLIVIER GOUreau,
INC.,

—X

Civil Action No. 12 cv 6443-PAE

**Civil Case Management Plan
And Scheduling Order
(Revised)**

NOEMI GOUREAU, NICOLAS GOUREAU,
GOOBERY CORP., NOG INTERNATIONAL, INC
and FOPPS, INC.

9

Defendants

v

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This Civil Case Management Plan (the “Plan”) is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).

1. All parties (consent) do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). [Circle one.] The parties are free to withhold consent without adverse substantive consequences. [If all parties consent, the remaining paragraphs need not be completed.]
2. This case (is) not to be tried to a jury. [Circle one.]
3. Amended pleadings may not be filed and additional parties may not be joined except with leave of the Court. The deadline to file any motion to amend or to join additional parties has passed.
4. Initial disclosures, pursuant to Fed. R. Civ. P. 26(a)(1), have already been completed, pursuant to the deadline in the Original Civil Case Management Plan And Scheduling Order.
5. All fact discovery shall be completed no later than June 10, 2013. [A period not to exceed 120 days, unless the Court finds that the case presents unique complexities or other exceptional circumstances.]
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 5 above.
 - a. Initial requests for production of documents to be served by January 15, 2013.
 - b. Interrogatories to be served by February 28, 2013.

- c. Depositions to be completed by June 10, 2013.
- d. Requests to Admit to be served no later than June 10, 2013.

7. a. All expert discovery shall be completed no later than July 25, 2013.
[Absent exceptional circumstances, a date forty-five (45) days from the date in paragraph 5, *i.e.*, the completion of all fact discovery.]

b. No later than thirty (30) days prior to the date in paragraph 5, *i.e.*, the completion of all fact discovery, the parties shall meet and confer on a schedule for expert disclosures, including reports, production of underlying documents and depositions, provided that (i) expert report(s) of the party with the burden of proof shall be due before those of the opposing party's expert(s); and (ii) all expert discovery shall be completed by the date set forth in paragraph 7(a).

8. All motions and applications shall be governed by the Court's Individual Rules and Practices, including the requirement of a pre-motion conference before a motion for summary judgment is filed. Pursuant to the authority of Fed. R. Civ. P. 16(c)(2), any motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto is made in writing within fourteen (14) days of the date in paragraph 5, *i.e.*, the close of fact discovery.

9. All counsel must meet face-to-face for at least one hour to discuss settlement within fourteen (14) days following the close of fact discovery.

10. a. Counsel for the parties have discussed an informal exchange of information in aid of early settlement of this case and have agreed upon the following:

The parties completed initial limited document exchange involving financial and corporate records, as well as documents concerning plaintiffs' joint venture allegations, plaintiffs' claim to an interest in the relevant trademarks, and plaintiffs' use of Gooberry customer information after May 2, 2012.

b. Counsel for the parties have discussed the use of the following alternate dispute resolution mechanisms for use in this case: (i) a settlement conference before a Magistrate Judge; (ii) participation in the District's Mediation Program; and/or (iii) retention of a privately-retained mediator. Counsel for the parties propose the following alternate dispute resolution mechanism for this case:

The parties are still conferring regarding this issue, and have discussed the District's Mediation Program as well as retention of a privately-retained mediator. The Court has appointed Magistrate Judge Debra Freeman to facilitate the parties' current efforts at alternative dispute resolution in connection with this matter, and the parties are currently conferring with her regarding setting up a telephone conference about the matter.

c. Counsel for the parties recommend that the alternate dispute resolution mechanism designated in paragraph 10(b), be employed at the following point in the case (*e.g.*, within the next sixty days; after the deposition of plaintiff is completed (specify date); after the close of fact discovery):

The parties currently believe that alternative dispute resolution will take place within the next 60 days.

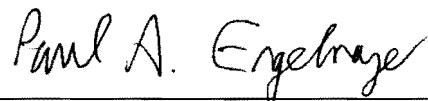
- d. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.
- 11. The Final Pretrial Order date is thirty (30) days following the close of fact and expert discovery (whichever is later). By the Final Pretrial Order date, the parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Rules and Practices and Fed. R. Civ. P. 26(a)(3). Any motions *in limine* shall be filed after the close of discovery on or before the Final Pretrial Order date. If this action is to be tried before a jury, proposed *voir dire*, jury instructions and verdict form shall also be filed on or before the Final Pretrial Order date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the joint submission. Jury instructions may not be submitted after the Final Pretrial Order date, unless they meet the standard of Fed. R. Civ. P. 51(a)(2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law should be submitted on or before the Final Pretrial Order date.
- 12. Counsel for the parties have conferred and their present best estimate of the length of trial is 4 to 5 days.
- 13. [Other items, including those in Rule 26(f)(3).]

TO BE COMPLETED BY THE COURT:

The Plan has been reviewed by the Court and, except as modified, is adopted as the Scheduling Order of this Court in accordance with Fed. R. Civ. P. 16(b).

- 14. [Other]
- 15. The next Case Management Conference is scheduled for July 8, 2013 at 2 pm

This ORDER may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as noted in paragraph 6) shall be made in a written application in accordance with paragraph 1.E of the Court's Individual Rules and Practices and shall be made no less than two (2) business days prior to the expiration of the date sought to be extended.



Paul A. Engelmayer
United States District Judge

Dated: New York, New York
April 22, 2013